

**ORIGINAL**  
BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations

(Peterstown, West Virginia)

**RECEIVED**

APR 06 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

) MM Docket 98-218

) RM-9388

) DOCKET FILE COPY ORIGINAL

To: The Chief, Policy and Rules Division, Mass Media Bureau

**MOTION TO ACCEPT LATE-FILED PLEADING**

Comes now EQUUS COMMUNICATIONS, INC. ("Equus") by Counsel, and respectfully requests the Commission to accept the attached "Comments of Equus Communications, Inc." out-of-time in the above-captioned proceeding. In support whereof, the following is shown:

1. Equus is the Licensee of Radio Station WREL-FM, Buena Vista, Virginia. Equus is currently licensed to operate on Channel 244A. It has a construction permit to operate as a B-1 facility.<sup>1</sup> However, it has never been able to construct at the site specified in the CP because of a condition imposed on the permit that required another station to change channels first - which it has never done.<sup>2</sup> As a consequence, Equus is still not able to construct - nine years after the CP was granted.<sup>3</sup> Additionally, because of the long delay, Equus lost access to the site specified in BPH-891109ID.

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<sup>1</sup> See BPH-891109ID, issued March 28, 1990.

<sup>2</sup> *Id.* Station WJMA, Orange, Virginia, was required to commence program tests on Channel 255A before Equus could commence operations on 244B-1. See also, *Woodstock, Broadway, Buena Vista, Staunton, New Market, Mount Jackson, and Orange, Virginia* (MM Docket 88-520), 4 FCC Rcd 6244 (1989).

<sup>3</sup> The Commission has failed to order the licensees of WAZR and WSIG to pay WJMA's expenses in changing channels, despite their pledge to do so in MM Docket 88-520.

2. Accordingly Equus filed, in November of 1998, an application for modification of construction permit specifying a new site, change in antenna structure and ERP.<sup>4</sup> Equus advised the Commission that the modification was necessitated as a result of having lost its site.

3. At the time the Commission announced the multi-docket rule making containing the Peterstown, West Virginia proposed allotment, it did not mention that the Peterstown proposal was in any way mutually exclusive with the CP Modification application. Nor did the Commission note that BMPH-981116IF should be considered a counterproposal to the proposed allotment in Peterstown. Thus, Equus had no notice whatsoever, that its application, which had been accepted for filing, and shown on the Application Status List as moving right on up on the "Routine" applications list, was in fact, in conflict with the Peterstown proposal. Equus only learned of the conflict when engineering counsel contacted the staff to determine the status of the application. Because of the lack of notice, Equus has been prejudiced by not being able to submit comments in MM Docket 98-218 in timely fashion.

4. As the attached Comments show, the petitioner, Bible Radio Broadcasters, submitted only the minimum amount of data to support its petition: a copy of a page from the USGS website showing that Peterstown appeared on the map and had site coordinates, and a one-page computer printout that purported to be a channel allocation study. No engineering statement apparently accompanied the petition. The only statement was legal counsel's statement that the reference coordinates were fully spaced. But as noted in the attached Comments, those reference coordinates failed to protect the reference coordinates for 244B1 in Docket 88-520.<sup>5</sup>

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<sup>4</sup> BPH-981116IF, accepted December 1, 1998.

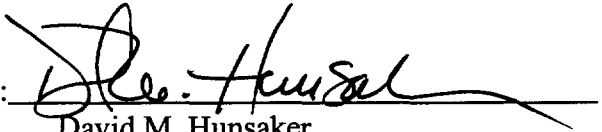
<sup>5</sup> Nor do the Peterstown coordinates protect the site specified in BMPH-981116IF, which admittedly, was filed after the initial filing of the petition, but well before the Commission issued the *NPRM* in Docket 98-218. As noted above, the Commission made no reference whatsoever to the conflict.

### CONCLUSION

Given the equities of the situation, and the significant public interest issues raised in its Comments, acceptance of the attached Comments is warranted and in the public interest. Accordingly, Equus respectfully requests that the attached Comments be accepted and considered in this proceeding.

Respectfully submitted,

**EQUUS COMMUNICATIONS, INC.**

By:   
David M. Hunsaker  
Its Attorney

*Law Offices*  
**PUTBRESE HUNSAKER & TRENT, P.C.**  
100 Carpenter Drive, Suite 100  
P.O. Box 217  
Sterling, Virginia 20167-0217  
(703) 437-8400

April 6, 1999

## CERTIFICATE OF SERVICE

I, Sharon L. Hinderer, Secretary in the Law Firm of **Putbrese Hunsaker & Trent, P.C.**, hereby certify that I have on this 6th day of April, 1999, sent, by United States Mail, postage prepaid, a true copy of the foregoing, "**Motion to Accept Late-Filed Pleading**" upon the following:

John Karousos, Chief \*  
Robert Hayne, Esq.  
Allocations Branch - Policy & Rules  
Mass Media Bureau - Room 3-A262  
Federal Communications Commission  
445 12th Street, S.W.  
Washington DC 20554

Jerrold D. Miller, Esquire  
Miller & Miller, P.C.  
1990 M Street, NW, Suite 760  
Washington DC 20036  
(Counsel for Bible Radio Broadcasters)

\*Via Hand Delivery  
(Courtesy copy)

Sharon L. Hinderer  
Sharon L. Hinderer

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

<b>In the Matter of</b>	)	<b>MM Docket 98-218</b>
	)	
<b>Amendment of Section 73.202(b)</b>	)	<b>RM-9388</b>
<b>Table of Allotments</b>	)	
<b>FM Broadcast Stations</b>	)	
	)	
<b>(Peterstown, West Virginia)</b>	)	

To: The Chief, Policy and Rules Division, Mass Media Bureau

**COMMENTS OF EQUUS COMMUNICATIONS, INC.**

Comes now EQUUS COMMUNICATIONS, INC. ("Equus") by Counsel, and respectfully submits the following Comments in the above-captioned proceeding.<sup>1</sup> In support whereof, the following is shown:

1. Equus is the Licensee of Radio Station WREL-FM, Buena Vista, Virginia. Equus is currently licensed to operate on Channel 244A. It has a construction permit to operate as a B-1 facility.<sup>2</sup> However, it has never been able to construct at the site specified in the CP because of a condition imposed on the permit that required another station to change channels first – which it has never done.<sup>3</sup> As a consequence, Equus is still not able to construct – nine years after the CP

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<sup>1</sup> Equus' "Motion to Accept Late-Filed Pleading" accompanies these Comments.

<sup>2</sup> See BPH-891109ID, issued March 28, 1990.

<sup>3</sup> *Id.* Station WJMA, Orange, Virginia, was required to commence program tests on Channel 255A before Equus could commence operations on 244B-1. See also, *Woodstock, Broadway, Buena Vista, Staunton, New Market, Mount Jackson, and Orange, Virginia*, (MM Docket 88-520), 4 FCC Rcd 6244 (1989).

was granted.<sup>4</sup> Additionally, because of the long delay, Equus lost access to the site specified in BPH-891109ID.<sup>5</sup>

2. Accordingly Equus filed, in November of 1998, an application for modification of construction permit specifying a new site, change in antenna structure and ERP.<sup>6</sup> Equus advised the Commission that the modification was necessitated as a result of having lost its site.

3. At the time the Commission announced the multi-docket rule making containing the Peterstown, West Virginia proposed allotment, it did not mention that the Peterstown proposal was in any way mutually exclusive with the CP Modification application. Nor did the Commission note that BMPH-981116IF should be considered a counterproposal to the proposed allotment in Peterstown. Thus, Equus had no actual notice whatsoever, that its application, which had been accepted for filing, and shown on the Application Status List as moving right on up on the "Routine" applications list,<sup>7</sup> was in fact, in conflict with the Peterstown proposal. Equus only learned of the conflict when engineering counsel contacted the staff to determine the status of the application. Because of the lack of notice of any conflict with its CP Mod Application, Equus did not submit comments in MM Docket 98-218 during the Comment period.

4. Equus respectfully submits that the Peterstown allotment proposal was improperly issued by the Allocation Branch Staff, and should not have been accepted. The petitioner, Bible Radio Broadcasters, submitted only the minimum amount of data to support its petition: a copy

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<sup>4</sup> The Commission has failed to order the licensees of WAZR and WSIG to pay WJMA's expenses in changing channels, despite their pledge to do so in MM Docket 88-520.

<sup>5</sup> The Staff also took four years to rule on a Motion for Reconsideration of the dismissal of the WSIG-FM minor change application and request for waiver (BPH-891216IG), and the grant of the WREL-FM B-1 application (BPH-891109ID). *Letter to David M. Silverman, Esq.* (Ref. 1800B3-JR) dated March 18, 1994.

<sup>6</sup> BPH-981116IF, accepted December 1, 1998.

<sup>7</sup> The March 15, 1999 list shows the CP Mod Application as blocked due to a "rule making conflict."

of a page from the USGS website showing that Peterstown appeared on the map and had community reference coordinates, and a one-page computer printout that purported to be a channel allocation study, albeit using different coordinates. No engineering statement accompanied the petition. The only signed statement was by the petitioner's legal counsel, who asserted that the proposed reference coordinates for the Peterstown allocation were fully spaced. However, the one-page allocation study that accompanied the petition clearly showed that the proposed allotment was short spaced to the WREL-FM B-1 reference coordinates by 2.8 km. The petition was thus self-contradictory and should have been returned.

5. The attached Engineering Statement of Sudhir K. Khanna, P.E., of the firm of Cohen, Dippell and Everist, P.C. confirms that the reference coordinates specified by the petitioner and utilized by the Commission in the *NPRM* fail to protect the reference coordinates for the Buena Vista B-1 allotment made in MM Docket 88-520, and are thus in violation of Section 73.207 of the Rules.<sup>8</sup>

6. It has long been Commission policy to protect allotment reference coordinates until a facility authorized in a construction permit is fully constructed and licensed. *See, Table of Allotments, FM Broadcast Stations, Grenada, Mississippi*, (MM Docket 96-130) 11 FCC Rcd 7014 (MMB 1996). In that case, the Staff withheld action on a Rule Making proposal because the petitioner's reference coordinates had not protected the reference coordinates of an FM Station's channel upgrade reference coordinates – even though the petitioner's reference coordinates did protect the coordinates contained in the FM Station's construction permit. The Staff specifically ruled that until the facilities authorized by CP were constructed and the new facilities licensed, the rule making petitioner was required to protect the allotment coordinates.<sup>9</sup>

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<sup>8</sup> 47 C.F.R. §73.207.

<sup>9</sup> *Id.*, 11 FCC Rcd 7014 at ¶2.

7. As noted above, Equus has lost access to the site specified in the construction permit due to the interminable delays in the Orange, Virginia station moving to Channel 255A. Unless and until the Commission grants the CP Modification Application, and Equus completes construction and obtains a license, the proposed allotment may not be made at Peterstown, and the petition should not have been entertained at all, since the WREL-FM B1 reference coordinates had not been protected.

8. Moreover, it is Commission policy to accommodate pending applications in conflict with proposed allotments whenever possible. *See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments*, 8 FCC Rcd, 4743 n.12 (1993). *See also, Hardinsburg, Kentucky*, 7 FCC Rcd 1746 (1992) (when possible, Commission has modified a rule making proposal to specify an alternate site or channel to accommodate an application). Because the Peterstown proposal was not in compliance with Commission policy when filed (*Grenada, Mississippi, supra*), it should be dismissed unless a different channel or reference coordinates can be found that would also protect the CP Modification Application filed by Equus in November of 1998.

#### SUMMARY

9. The Petitioner, Bible Radio Broadcasters, has submitted a rule making allotment proposal that is not in compliance with the Commission's processing rules. It did not protect the allotment reference coordinates of the Buena Vista B-1 allotment. The petitioner's own showing established that its reference coordinates were short by 2.8 kilometers. Yet, the staff, apparently relying upon counsel's representation that the reference coordinates were fully spaced, adopted the *NPRM* in this case, in contravention of its own policy. The failure to notify Equus or the public at large that the proposal was MX'ed with the Equus CP Mod application site further exacerbated the problem and prejudiced Equus, which has been trying to construct its B-1 facility for almost ten years. Equity thus demands that the Commission protect both the Equus reference



site and its CP Mod application site, and dismiss the Peterstown rule making proposal as improvidently issued.

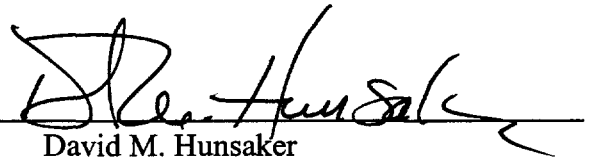
### CONCLUSION

WHEREFORE, the above premises considered, Equus respectfully urges that the proposed allotment to Peterstown, West Virginia be WITHDRAWN, and the petition for rule making DISMISSED; Alternatively, Equus requests that new coordinates and/or a different channel be selected for Peterstown, WV, such that both the Equus reference site and the CP Modification site be fully protected.

Respectfully submitted,

**EQUUS COMMUNICATIONS, INC.**

By: \_\_\_\_\_



David M. Hunsaker

Its Attorney

*Law Offices*

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(703) 437-8400

April 6, 1999

**ENGINEERING STATEMENT  
RE NOTICE OF PROPOSED RULE MAKING FOR  
CHANNEL 244A, PETERSTOWN, WEST VIRGINIA**

**MARCH 1999**

**COHEN, DIPPELL AND EVERIST, P.C.  
CONSULTING ENGINEERS  
RADIO AND TELEVISION  
WASHINGTON, D.C.**

City of Washington )  
 ) ss  
District of Columbia )

That he is a registered professional engineer in the District of Columbia, holds the degree of Master of Science in Electrical Engineering, and is Secretary-Treasurer of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio-Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That the attached engineering report was prepared by him or under his supervision and direction; and

S. R. Rasmussen

**Sudhir K. Khanna**  
District of Columbia  
Professional Engineer  
Registration No. 8057

Subscribed and sworn to before me this 31<sup>st</sup> day of March, 1999.

Carly L. Lyman  
Notary Public

**My Commission Expires:**

2/28/2003

This engineering statement is prepared on behalf of Equus Communications, Inc., licensee of FM broadcast station WREL, Buena Vista, Virginia, and is in response to a Notice of Proposed Rule Making (RM-9388, MM Docket No. 98-218) to allot Channel 244A to Peterstown, West Virginia.

WREL-FM is currently licensed on Channel 244A and has an authorization for Channel 244B1 in Buena Vista, Virginia. WREL-FM was allotted the channel upgrade and authorized a construction permit (BPH-891109ID) by the Commission to operate on Channel 244B1. However, due to circumstances beyond WREL's control, it was precluded from implementing its authorized facilities. The antenna site authorized in the construction permit is no longer available to WREL-FM which further exacerbates the allocation situation with respect to implementing its Channel 244B1 allotment.

The attached map shows the minimum separation arc from the proposed Channel 244A allotment site at Peterstown, West Virginia, with respect to the Channel 244B1 WREL CP site and the WREL Channel 244B1 reference site.

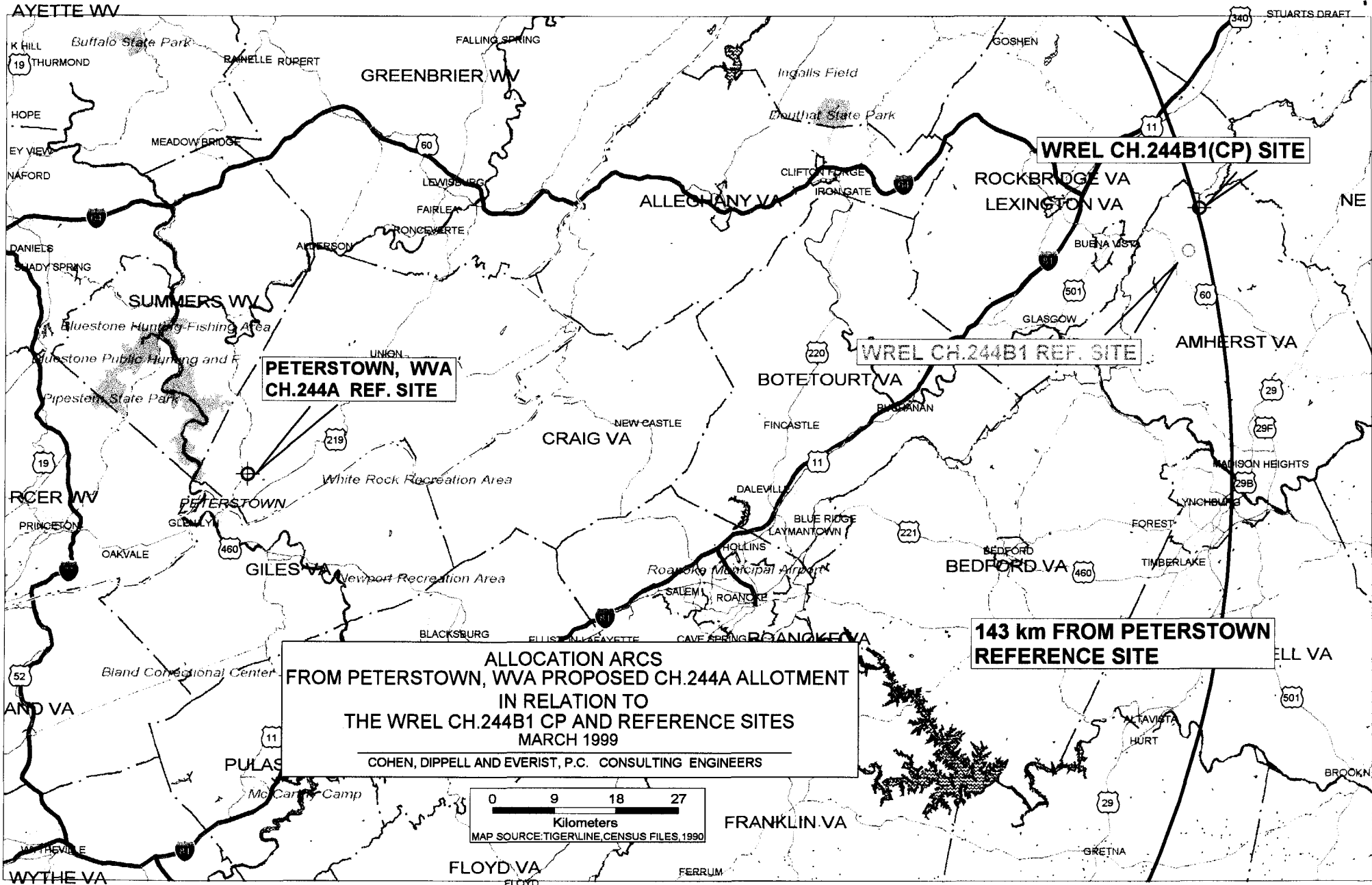
The map indicates the reference site of the Peterstown Channel 244A allotment complies to the WREL Channel 244B1 CP site whereas it is 2.8 km short-spaced with respect to the Channel 244B1 WREL reference site. The required separation between a co-channel FM Class A and B1 facility is 143 km. The distance separations between the

Peterstown Channel 244 allotment and the WREL CP site and WREL reference site locations are as follows:

- 1) Peterstown, Channel 244A allotment to the Channel 244B1 WREL CP site--143.2 km
- 2) Peterstown, Channel 244A allotment to the Channel 244B1 WREL-FM reference site--140.2 km.

As such, the proposed allotment of Channel 244A at Peterstown, West Virginia, does not comply with Section 73.207 of the Commission's Rules with respect to the WREL-FM Channel 244B1 reference site.

AYETTE WV



## CERTIFICATE OF SERVICE

I, Sharon L. Hinderer, Secretary in the Law Firm of **Putbrese Hunsaker & Trent, P.C.**, hereby certify that I have on this 6th day of April, 1999, sent, by United States Mail, postage prepaid, a true copy of the foregoing, "**Comments of Equus Communications, Inc.**" upon the following:

John Karousos, Chief \*  
Robert Hayne, Esq.  
Allocations Branch - Policy & Rules  
Mass Media Bureau - Room 3-A262  
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Washington DC 20554

Jerrold D. Miller, Esquire  
Miller & Miller, P.C.  
1990 M Street, NW, Suite 760  
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(Counsel for Bible Radio Broadcasters)

\*Via Hand Delivery  
(Courtesy copy)

Sharon L. Hinderer  
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